

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>GENE HINK</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 180,825
<b>CLARK COUNTY</b>	)	
Respondent	)	
AND	)	
<b>EMPLOYERS MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
<b>WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant requested review of the Award dated May 7, 1996, entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on October 1, 1996.

**APPEARANCES**

Claimant appeared by his attorney, R. Owen Watchous of Olathe, Kansas. Respondent and its insurance carrier appeared by their attorney, James M. McVay of Great Bend, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Wendel W. Wurst of Garden City, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

The Administrative Law Judge denied claimant's request for benefits on the basis that claimant failed to prove that he sustained personal injury by accident arising out of and in the course of his employment with the respondent. Claimant requested review of that finding. That is the only issue on this review.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

The Award denying benefits should be affirmed in part, reversed in part, and the proceeding remanded to the Administrative Law Judge for further adjudication.

The Appeals Board finds that it is more probably true than not true that claimant's bilateral ulnar nerve compressions at the elbows were caused by claimant's work activities. This conclusion is based upon the opinions expressed by claimant's family physician, Charles Stevens, M.D., and more importantly, the opinions of claimant's surgeon, Charles McElhinney, M.D.

Based upon Dr. McElhinney's testimony, the Appeals Board finds that claimant's left ulnar nerve was compressed by scar tissue at the elbow and that the compression was caused by leaning upon it for extended periods while driving a road grader for the respondent. Similarly, the Appeals Board finds that claimant's right ulnar neuropathy was also caused by claimant's job duties.

The Appeals Board is aware that board-certified neurologist William C. Koller, M.D., testified that he believes claimant's upper extremity neuropathies were caused by long-standing diabetes. However, Dr. Koller's opinions appear to be based upon the incorrect assumption that claimant's left upper extremity atrophy continued to worsen after the left ulnar nerve translocation and left carpal tunnel release surgeries performed in early 1994. Dr. Koller did not address the question of whether diabetes has the potential to cause either the scar tissue buildup or the hourglass compression of the ulnar nerve as found by Dr. McElhinney during surgery. Further, it is not clear from the record whether Dr. Koller reviewed either Dr. Stevens's or Dr. McElhinney's medical records and, therefore, it is also unclear whether Dr. Koller was aware of Dr. McElhinney's visual observations made during surgery.

Although the bilateral ulnar nerve injuries were caused by claimant's work, the Appeals Board finds that claimant has failed to prove the bilateral carpal tunnel syndrome was caused or aggravated by claimant's job duties. Dr. Stevens did not provide an opinion regarding the cause of the carpal tunnel syndrome. Dr. McElhinney indicated in a letter dated September 28, 1994, that the carpal tunnel was caused by repetitive work activities. However, claimant's description of his job duties is completely devoid of activities requiring repetitive motion. Although it is conceivable that the carpal tunnel syndrome was caused by driving the road grader for extended periods, no party asked any of the doctors who testified whether that activity would be medically competent to produce such an injury. Regarding the carpal tunnel syndrome, claimant has failed to sustain his burden of proof that those injuries were caused by his work activities.

Based upon the above, the Appeals Board finds that claimant may be entitled to receive permanent partial disability benefits for the bilateral ulnar nerve injuries but should be denied benefits for the median nerve neuropathies and bilateral carpal tunnel syndrome. The only issue decided upon this review was whether claimant's injuries arose out of and in the course of his employment with the respondent. No opinion is expressed regarding the other issues which were before the Administrative Law Judge but which were not addressed. Therefore, this case should be remanded to the Administrative Law Judge to address any and all other remaining issues which were initially submitted for adjudication.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated May 7, 1996, entered by Administrative Law Judge Jon L. Frobish is affirmed in part, reversed in part, and remanded to the Administrative Law Judge to further adjudicate claimant's entitlement to benefits for bilateral ulnar nerve injuries; that the denial of benefits for the alleged median nerve neuropathies, including bilateral carpal tunnel syndrome, is proper and remains in effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: R. Owen Watchous, Olathe, KS  
James M. McVay, Great Bend, KS  
Wendel W. Wurst, Garden City, KS  
Administrative Law Judge, Garden City, KS  
Philip S. Harness, Director